In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.1338 OF 2003

Date of Decision: 17.11.2006

Shiv Kumar Goel …Petitioner.

Versus

State of Haryana & Another …Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE S.N.AGGARWAL

Present: Mr.K.S.Dhillon, Advocate for the Petitioner.

Mr.Harish Rathee, Sr.DAG Haryana for Respondent No.1

Mr.R.N.Lohan, Advocate for the Respondent No.2

JUDGMENT

M.M.KUMAR, J.

The order dated 20.11.2002 (Annexure P1) passed by the Managing Director of Haryana State Minor Irrigation & Tube-well Corporation, Chandigarh, (hereinafter referred to as "Corporation") respondent No.2 is subject matter of challenge in this petition filed under Article 226 of the Constitution. The

petitioner has been denied pay and emoluments in respect of his suspension period commencing from 12.7.1996 to 30.6.2002. It has further been ordered that the aforementioned period is to be treated as a non-duty period for all intents and purposes. The punishment of warning has already been administered to him. It is undisputed that the petitioner who was working on the post of Assistant Cashier was placed under suspension on 12.7.1996 on the registration of FIR No.242 dated 12.7.1996 under the Prevention of Corruption Act, 1988, registered at Police Station Gohana. During the pendency of the criminal trial, the services of the petitioner were retrenched on 30.6.2002. On 24.1.2002, the petitioner was acquitted by the Special Judge, Sonepat as the charge against him could not be proved. He approached respondent No.2 for his reinstatement in the service by moving an application dated 17.2.2002 (Annexure P5). However, a charge sheet was served on him on 24.10.2002 (Annexure P7). The petitioner sent a detailed reply to the charge sheet on 28.10.2002 (Annexure P8). He was granted personal hearing on 20.11.2002. After the personal hearing, the Managing Director of the Corporation, passed the impugned order and the operative part of the same reads as under:-

> "After thoughtful consideration of all the material record, judgment of the Special Judge, Sonepat, charge-sheet and reply to the charge-sheet, I hereby order to treat the period of suspension from 12.7.1996 to 30.6.2002 afternoon as non-duty period, it has been

observed that Shri Shiv Kumar Goyal was charge-sheeted in FIR No.242 of 12.07.1996 under Section 7, 11, 13 of the Prevention of Corruption Act, 1988 as he was involved in taking the illegal gratification from Shri Phool Singh complainant in that case. After due adjudication of the case, the Ld. Special Judge, Sonepat found that the prosecution version in contradictory by its own witnesses and thus the case of the prosecutor becomes highly doubtful therefore, the Ld. Special Judge, extended the benefit of doubt to Shri Shiv Kumar Goyal. Keeping in view the findings of the Ld. Special Judge, Sonepat and conduct of the official, I am fully convinced that Sh.Shiv Kumar is fully responsible for the acts and deeds committed by him while discharging his duties. Since, he has already been retrenched by the Corporation on 'Closure of the Corporation'. I hereby order to treat the period of suspension from 12.7.1996 to 30.6.2002 after noon non-duty period of all intents and purposes with a warning. It is further ordered that he shall not be entitled to any extra pay, emoluments except the subsistence allowance admissible under the rules".

Mr.K.S.Dhillon, learned counsel for the petitioner has argued that once the Corporation has decided to drop the charge-sheet for inflicting major punishment on the petitioner then nothing remains to record a finding that the petitioner was in any way

responsible for the acts and misdeeds allegedly committed by him while discharging his duties. According to learned counsel, on the retrenchment of the petitioner on 30.6.2002 by the Corporation the relationship of employer and employee has come to an end and no punishment in any case could have been inflicted upon him unless the charge sheet was issued before his retrenchment or it was in respect of an event which has happened four years prior to the date of his retrenchment. He has further argued that FIR on the basis of allegations of taking illegal gratification was registered on 12.7.1996 and the charge sheet was issued on 24.10.2002 which is much beyond the period of four years as stipulated in Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II (as applicable to Haryana) Learned counsel has vehemently contended that the order is without any justification and no enquiry proceedings could have been initiated nor any show cause notice could have been issued for infliction of a major or a minor penalty on the petitioner. He has placed reliance on Rule 2.2(b) of the Punjab Civil Services Rules Volume-II (As applicable to Haryana).

Mr.R.N.Lohan, learned counsel for the respondents has submitted that there is alternative efficacious remedy available to the petitioner to file an appeal before the Chairman of the Corporation against the order dated 20.11.2002 (Annexure P1). On merits, he has argued that despite acquittal he cannot be held entitled to reinstatement with grant of all consequential benefits along with back wages as a matter of course. In that regard, he has placed reliance on the judgment of the Supreme Court in the

case of **"Krishnakant Raghunath Bibhavnekar V. State of Maharashtra" AIR 1997 SC 1434** and argued that the disciplinary Authority could have enquired into the misconduct or after issuing show cause notice, passed an appropriate order by treating suspension period as period not spent on duty.

We have thoughtfully considered the respective submissions made by the learned counsel for the parties and are of the view that this petition deserves to be allowed because the petitioner has been acquitted by the criminal Court. Learned Special Judge has recorded finding in para 9 of his judgment dated 24.1.2002 holding that the prosecution has miserably failed to prove that the petitioner had ever demanded money on behalf of the Executive Engineer Sh.J.C.Mittal. The aforementioned allegation is neither levelled against him in the complaint, which was exhibited on record as Ex.PB nor any such fact had been stated by any witness. On the contrary, it has been stated in the complaint Ex.PB that the Executive Engineer Sh.J.C.Mittal had demanded money to be handed over to accused S.P.Bhatia. It is worthwhile to extract para 9 of the judgment, which reads as under:-

> "This argument is devoid of any force. As per Section 7 of the Act whoever being a public servant accepts for himself or for any other person, any gratification to show as undue favour then he is liable for punishment. But in the present case the prosecution has miserably failed to prove that accused Shiv Kumar

Goyal ever demanded money on behalf of J.C.Mittal, XEN, CADA to prepare the cheque. Neither it is mentioned in complaint Ex.PB nor this fact is stated by any witness. As per complain Ex.PB, XEN J.C.Mittal demanded money to be handed over to accused S.P.Bhatia. None of the accused ever asked the complainant to pay or demanded any money to prepare bill. It may be mentioned here that the police machinery came into action on the basis of demand made by XEN J.C.Mittal. But, he is not sent by the police for trial. To hold any person guilty for the offence punishable under this section it is necessary for the prosecution to prove this demand and handing over of the money. The evidence produced by the prosecution regarding demand and accepting money is not clinching. The name of accused Shiv Kumar Aggarwal did not figure any where in complaint Ex.PB not to talk of the statement of PW2. When the prosecution has failed to prove the demand and acceptance of money in lieu thereof this case is bound to fail. It may be mentioned here that the bill was to be passed finally by XEN and he was supposed to issue the cheque. XEN was the final authority to decide this matter. None of the accused was supposed to clear the bill and issue the cheque. Shiv Kumar Aggarwal was supposed to issue cheque only after the orders of XEN. He had no

role to play in preparing the bill or issuing the same. Accused S.P.Bhatia was supposed to send the bill to XEN for his necessary orders. It was the duty of the XEN to finally pass or reject a bill. So, there was no occasion for them to demand money from the complainant though it is neither the case of the prosecution nor stated by PWs. My these views are fortified by the opinion of Hon'ble Supreme Court expressed in State of Uttar Pradesh Vs. Ram Asrey 1990 Criminal Court Judgments 82, opinion of our own Hon'ble High Court expressed in Hoshiar Singh Vs. State of Haryana 1995(2) Criminal Court Judgments 638, Shadi Lal Vs. State of Haryana R.C.R. (Criminal 660) and Satbir Singh Vs. State of Haryana 2000(1) Recent Criminal Reports 487 (case law cited by learned defence counsel) wherein it is specifically opined that if the accused was not supposed to do the act to give any benefit to the complainant and there was no demand from him then the accused cannot be held guilty just on the basis of the recovery of the alleged money".

It is true that in para 12, learned Special Judge has observed that the benefit of doubt was being given to the petitioner but the discussion in para 9 leaves no manner of doubt that the petitioner has been acquitted on merit because he was neither imputed a statement of demanding money on behalf of Executive

Engineer Sh.J.C.Mittal nor any such allegation was mentioned in the complaint Ex.PB. Even none of the witnesses has stated so. The kingpin of the whole crime appears to be the Executive Engineer Sh.J.C.Mittal who was not even sent for trial by the police. Therefore, it cannot be concluded that the petitioner has been merely given a benefit of doubt. Infact the prosecution had failed to satisfy the requirements of Section 7 of the Prevention of Corruption Act, 1988, by proving the allegations in material particular. The requirement of substantive law has not been satisfied and in such a situation it cannot be accepted that the petitioner has been acquitted by giving him benefit of doubt.

Even otherwise, the provisions of Punjab Civil Service Rules Volume-II (as applicable to Haryana) would cover the issue. The principles laid down in Rule 2.2(b) of the aforementioned Rules, which are applicable to a pensioner can be imported in the case of a retrenched employee like the petitioner. The aforementioned rule contains an omnibus provision and the same reads as under:-

> "**2.2**(a) Future good conduct is an implied condition of every grant of a pension. The appointing authority reserve to itself the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct.
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> The decision of the appointing authority on any question of withholding or withdrawing the whole or

any part of pension under this rule shall be final and conclusive.

Note 1. ……..

Note 2. ……..

Note 3. ……..

Xx xx xx xx xx xx xx xx xx xx

(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

Provided that –

(1) such department proceedings, if instituted while the officer was in service whether before his retirement or during his re-employment shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

(2) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made;

(3) such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his employment, shall be instituted in respect of an event as is mentioned in clause(ii) of proviso(2); and

(4) The Public Service Commission shall be consulted before final orders are passed.

Explanation.- For the purpose of this rule-

(1) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the

officer has been placed under suspension from an earlier date, on such date; and

(2) judicial proceedings shall be deemed to have been instituted.-

(i) in the case of criminal proceedings, on the date on which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court".

A perusal of the aforementioned provision would make it explicit that the Punishing Authority could have continued disciplinary proceedings against the petitioner even after retirement nay retrenchment. Had such proceedings been initiated before the date of his retrenchment, the underlined principle adopted in rule 2.2(b) that an employee who has retired nay retrenched would not be applicable. There is further rider that such an employee should have been found guilty of a grave misconduct or ought to have caused pecuniary loss to the Government by misconduct or negligence. The Rule further provides that departmental proceedings can also be instituted after the retirement with the sanction of the Government but the same has to be in respect of an event which had taken place more than four years before the date of institution of such proceedings.

When the facts of the present case are examined in the light of the principle laid down in the aforementioned Rule it

transpires that the petitioner was subjected to a criminal trial by registration of FIR No.242 dated 12.7.1996 under the provisions of Prevention of Corruption Act, 1988 registered at P.S. Gohana. He was acquitted on merit for lack of evidence as substantive attributes of Section 7 of the Prevention of Corruption Act, 1988, remain unsatisfied and no evidence connecting the petitioner to the crime could be produced by the prosecution. Accordingly, a judgment of acquittal was recorded in his favour by learned Special Judge on 24.1.2002 (Annexure P3). In the meanwhile after the judgment of acquittal the services of the petitioner were retrenched on 30.6.2002. Despite the issuance of charge sheet dated 24.10.2002 (Annexure P7) and the reply of the petitioner dated 28.10.2002 (Annexure P8), the Managing Director of the Corporation has passed an order against the petitioner by treating the period of suspension as a non-duty period without giving him any benefit except the payment of subsistence allowance. The petitioner has also been given warning. According to the principle laid down in Rule 2.2 of ibid rules, the disciplinary authority could not have initiated disciplinary proceedings against the petitioner. In any case, attempt made by the punishing authority to proceed against the petitioner by issuing him charge sheet was virtually abandoned yet order of punishment dated 20.11.2002 was passed. It is well settled that once the departmental proceedings for imposition of major penalty had been initiated against a delinquent employee then even for imposing a minor penalty like warning etc. regular departmental proceedings are required to be initiated. In

that regard, reliance may be placed on a Full Bench judgment of this Court in the case of **"K.G.Tiwari v. State of Haryana & Others" 2002(4) SLR 329**.

Another reason which persuaded us to take the view that no enquiry could be held after the acquittal of the petitioner on merit by the criminal Court is that the charge sheet dated 24.10.2002 (Annexure P7) issued to the petitioner is based on the same facts and allegations which were the basis of criminal charge. Even the evidence which was likely to be produced in the departmental proceedings was similar. It was in these circumstances that the Supreme Court in the case of **"G.M.Tank v. State of Gujarat" (2006)5 SCC 446** has held that no enquiry after the acquittal of the petitioner in criminal trial would be permissible. Therefore, the order dated 20.11.2002 (Annexure P1) passed by the Managing Director cannot be sustained in the eyes of law.

There is another aspect of the matter. In the Punjab Civil Services Rules Volume-I (as applicable to Haryana) Chapter VII has been incorporated which deals with amongst other things the subject of suspension. Rule 7.3 lays down a comprehensive procedure for coming to a conclusion as to how the period of suspension is to be treated. The aforementioned Rule was subject matter of consideration by Hon'ble the Supreme Court in the case of **"B.D.Gupta v. State of Haryana" (1973)3 SCC 149**. It was held that if an order adversely affects financially then even minor penalty has to be passed after objective assessment of all relevant

facts and circumstances. The aggrieved employee is required to be granted a full opportunity of hearing by issuing show cause notice. In the present case, there is no show cause notice issued to the petitioner on the subject of treatment of his period of suspension. Even on that account, the order dated 20.11.2002 (Annexure P1) is liable to be set-aside.

The argument of learned counsel for the respondent based on the judgment of the Supreme Court in **Krishnakant Raghunath Bibhavnekar's case (supra)** has failed to impress us because there was ample scope for holding of an enquiry as the employee had neither been retired from service nor was retrenched. In the present case, the employer-employee relationship has come to an end on 30.6.2002 when he was retrenched from service and, therefore, the aforementioned judgment is not applicable to the facts of the present case. Accordingly, the argument is devoid of merit and the same is rejected.

For the reasons aforementioned, this petition succeeds and the order dated 20.11.2002 (Annexure P1) is set aside. The petitioner is held entitled to all consequential benefits. In other words, he shall be paid salary for whole of the period of suspension from 12.7.1996 to 30.6.2002 by treating the same as a period spent on duty for all intents and purposes.

(M.M.KUMAR)
Judge

November 17, 2006 **(S.N.AGGARWAL)**
dkb **Judge**